

AUTHORITY FOR ADVANCE RULING TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO 32,
5TH FLOOR, ROOM NO 503, ELEPHANT GAATE BRIDGE ROAD,
CHENNAI-600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Additional Commissioner / Member,
Office of the Commissioner of GST & Central Excise, Chennai -34

2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (CT) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 19 /AAR/2020 DATED: 20.04.2020

GSTIN Number, if any / User id	33AAHFA0811C1ZD
Legal Name of Applicant	A.M. Abdul Rahman Rowther & Co
Trade Name of the Applicant	Nizam Tobacco Factory
Registered Address/Address provided while obtaining user id	No.4, Old Palace Building, Pudukkottai
Details of Application	GST ARA-01 Remanded register no 01 Dated: 08.01.2020
Concerned Officer	State : The Assistant Commissioner (ST), Pudukkottai-1 Assessment Circle, Centre: Trichy Commissionerate Division: Thanjavur Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Manufacturing
B Description (in Brief)	
Issue/s on which advance ruling required	Unmanufactured Tobacco- Classification
Question(s) on which advance ruling is required	1. Classification of Goods 2. Application of Notification 01/2017- Comp.Cess(Rate)

Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. A.M. Abdul Rahman Rowther & Co, No.4, Old Palace Building, Pudukottai 622001 (hereinafter referred as applicant) are manufacturers of Chewing Tobacco and are registered under GST Act with Registration No. 33AAHFA0811C1ZD.

2. The applicant had filed an application for Advance Ruling on 06.02.2019 seeking ruling on the following question:

“Classification of the product “ Chewing Tobacco” manufactured by them and applicability of Notification No.01/2017-Compensation Cess-(Rate).”

In the application they had stated that they are the manufacturers of chewing tobacco under the registered brand of “Nizam Lady” and trade name of A.R. Abdul Rahman Rowther & Co

3.1 The original authority after hearing the applicant personally and on careful examination of the submissions of the applicant and the comments furnished by Commissioner, CGST Trichy ruled as follows vide Order No.37/AAR/2019 dated 27.08.2019

“The application is rejected under first proviso to Section 98(2) of the CGST/TNGST Act 2017, as the issue for which Advance Ruling is sought by the applicant is already pending before the appropriate authority.

The above decision was arrived at by the lower authority as per the first proviso to Section 98(2) of CGST/TNGST Act 2017 which forbids the authority to admit the

application when the question raised is already pending or decided in any proceedings in the case of the applicant, under any provisions of the Act. Commissioner GST & Central Excise, Trichy in the comments furnished on the Application, has stated that the proceedings has been initiated and an offence case booked vide O.R. No.17/2018-19(DPU-GST) dated 09.01.2019 in respect of the applicant on the very issue raised by him before the authority while the application is filed on 06.02.2019 i.e. after the proceedings initiated under the provisions of the GST Act.

3.2 The applicant aggrieved with the above decision of the lower authority filed an appeal on 17.09.2019 before the Tamilnadu Appellate Authority for Advance Ruling on the plea that in as much as their application was accepted and AAR satisfied that there is no pending issues in the subjected matter or matter already decided either in Department or court proceedings during PH on 22nd May 2019 before the lower authority, the said authority has rejected the application for the reason that proceedings are pending.

4. The appellate authority after carefully considering the various submissions of the applicant and keeping in view the applicable statutory provisions ruled vide Order -in-Appeal No. AAAR/07/2019(AR) dated 21.10.2019 as follows:

“The order No. 37/AAR/2019 dated 27.08.2019 passed by the Lower Authority in the case of the Appellant is set aside. The matter is remanded to the lower authority for consideration and passing of appropriate orders on whether the issue raised in the application by the appellant was already pending before the department after extending opportunity to the appellant.”

5.1 On the directions of the appellate authority the applicant was requested to appear for personal hearing on 07.11.2019, whereas the applicant requested for adjournment to the next convenient date in view of the fact that the authorized representative is out of station. Further, the applicant was extended another hearing on 13.12.2019 and the applicant again requested for adjournment. The applicant was once again extended an opportunity to be personally heard on 29.01.2020. The authorised representative of the applicant appeared before the authority and gave a written submission. They stated that the summons was issued on 08.01.2020 which was general in nature. The subsequent SCN was issued with specific issue of

classification, hence, should not be counted towards proceedings under Section 98(2). The Jurisdictional Central Tax officer appeared and gave a written submission. They stated that a statement was recorded on 09.01.2019, where the specific issue of classification was raised and hence should be counted towards proceedings under Section 98(2) and not allowable for Advance Ruling. The Jurisdictional state officer also gave a written submission.

5.2 In their written submission the applicant has contended that

- they have been summoned on 8th Jan 2019 as per the provisions of Section(70) of the GST Act by the Jurisdictional authority and on 9th of Jan 2019 the statement was recorded with all relevant details of the productions, revenue paid and clearance of assessable goods, etc.
- The subject matter of the summon is regarding the possible shortfall in payment of GST during the past periods and in relation to it the jurisdictional authority had called for certain documents as mentioned in the schedule of summons. Under the schedule to the summon issued under Section 70 of CGST Act, they had called for
 - Abstract of GST invoices issued along with random sample copies for outward supply
 - List of buyers along with the copies of purchase order received from them
 - List of job workers and details of manufacturing premises
 - P& L account, Balance Sheet with notes and schedules for the financial years 2017-18 and 2018-19
 - Income tax returns for the above period
 - Copy of Partnership deed
- The above list of documents were called for the purpose of analyzing the possible short fall in the revenue of GST and these are nothing to do with the classification of commodity which they are dealing
- If the jurisdictional authority is really interested in classification issue, summon shall be so designed that purpose, documents, records and evidence shall relate to subject of classification of product. Further, the jurisdictional authority has not asked for the process of manufacture, lab test report and product specification and packing, labeling aspects which are the main element for determining and analyzing the classification of product in question.

- There are number of reasons for shortfall in payment of GST and classification is one among the reason and it is, not the sole reason. Further, the enquiry officers have referred the provisions of GST in their enquiry mode such as section 37, 38, 49, and Rule 39. Hence, the summons has not been issued solely on the ground of classification of commodity and applicable GST rate.
- Therefore the reason for rejection of their application is clearly been evident that it has been made after thought by correlating the summons issued in general with possible ground for rejection as regards the subject matter of application in particular filed before AAR

Further the authorized representative vide letter dated 30.01.2020 received on 04.02.2020 has submitted the decision of Hon'ble Supreme Court in the case of Barium Chemicals Ltd & Anr Vs A.J.Rana AIR 1972 SC 591 and claimed that basis of documentary evidence which is not complete with respect to general and specific aspect are liable to be quashed.

5.3 The central Jurisdictional officer submitted the copy of the statement recorded on 09.01.2019 and also the copies of summon issued on 08.01.2019 and 19.06.2019.

5.4 The state jurisdictional officer forwarded comments on the issue raised in the application vide their letter dated 28.01.2020. They stated that under the present GST Act 2017, chewing tobacco is classified under HSN 2403 and taxable at 28% GST. They also referred to the Hon'ble Supreme Court's findings in the case of Crane Betel Nut Powder Works Vs Commissioner of Customs & Central Excise Tirupathi and another reported in 2007(6) VST 532(SC).

6.1 We have carefully examined the submissions made by the applicant during the personal hearing and the documents submitted by the Central Jurisdictional authority. The remand directions are

for consideration and pass appropriate orders on whether the issue raised in the application by the appellant was already pending before the department after extending opportunity to the appellant

The applicant in their original application has sought advance ruling on

Classification of goods- Unmanufactured Tobacco and applicability of Notification No 01/2017-Compensation Cess (Rate)

6.2 We find that the applicant accepts the fact that the Central Tax authorities have issued a Summon on 08.01.2019 and the applicant has tendered a Statement on 09.01.2019. It is the contention of the applicant that the summon and the related proceedings were not issued based on the classification of the product for which the advance ruling is sought by them, but the summon issued was about the possible shortfall in payment of GST for which the classification of the product may be one among the reasons for shortfall and not the sole reason for shortfall in GST Payment and has further contended that the reason for rejection of their application is an afterthought by correlating the summons issued in general with possible ground for rejection as regards the subject matter of application filed before this authority.

6.3 The Central Tax Authorities who have issued summon had recorded a statement on 09.01.2019 from Shri. A.R.Syed Ibramsa, Managing Partner of the applicant. The relevant portion of the statement is given below:

“...effective from 1st July 2017, we have classified our final product “Branded Chewing Tobacco” under Chapter Heading CETH 24039990. Up to the month of June 2017 our product was classified under CETH 24039910. The manufacturing process of our final product namely “Branded Chewing Tobacco” is as follows. We use to procure raw tobacco leaves from various places. The tobacco leaves are minced, soaked in jiggery water, dried, essence added to the tobacco and packed in retail packets manually under the denomination (Rs.) 10X3 and (Rs.) 15X4. The packet of denomination of 10X3 contains 3 nos. of 30 Rs. Packets each in a paper pouch and similarly the 15X4 packets contain 4 nos. of 60Rs. Packets each in a paper pouch. We do not add lime tubes in our final product packets. The process of manufacture does not involve machine packing. Machines are used only in the course of mincing of tobacco leaves. We clear the goods to the shop keepers from my factory gate. The final product is consumed by the user by way of Chewing. By chewing the tobacco, the same acts as a stimulant for the user. Today you pointed to us that our final product viz. “Branded Chewing tobacco without lime tube” is classifiable under HSN 24039910 and as such the same attracts GST Compensation Cess @ 160% as per notification 1/2017-Compensatory Cess(Rate) dated 28.06.2017. In this regard, we wish to state that our above said final product is classifiable only under HSN 24039990. Though we have been classifying the same under CETH 24039910 upto June 2017, we honestly believe that our product is a product of

such type classifiable under the category of "Other manufactured tobacco" also our product of manufactured tobacco is identifiable under Sl.No. 37(all goods other than Pan Masala containing tobacco gutka bearing a brand name) and Sl.No. 38(all goods other than Pan Masala containing tobacco gutka not bearing a brand name) of the GST Compensation rate table. Accordingly, we have been paying GST Compensation @ 96% advalorem. Today as called for in your summons we hereby furnish you the month wise abstract of our clearances and tax payments for the period from 01.07.2017 to 30.11.2018. We will be furnishing the random sample copies of GST Bills, paper pouches and remaining documents to you within a week's time....." (Emphasis supplied)

From the above extract of the Statement rendered voluntarily by the managing Partner of the Applicant Company, before the Central Tax Officers, it is clearly evident that the investigation was **also** on the aspect of the classification of the product and the applicable compensation cess. Further, it is seen in the statement that the officer recording the statement has informed the applicant that their **product viz. "Branded Chewing tobacco without lime tube" is classifiable under HSN 24039910 and as such the same attracts GST Compensation Cess @ 160% as per notification 1/2017-Compensatory Cess (Rate) dated 28.06.2017**, which is different from the classification being followed by the applicant. Therefore, factually it is evident that the issue of classification of the product under consideration was initiated and proceedings were pending with the Tax authorities, when the applicant has filed the application 06.02.2019 before this authority seeking Advance Ruling on the classification and rate of Compensation Cess applicable to such product before this authority.

6.4 Section 98(2) of the GST ACT 2017, states as follows:

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

As per the first proviso to Section 98(2) of CGST/TNGST Act 2017 the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. In the case at hand, it is established that on the issues raised by the applicant before this authority, the Central Tax authorities have initiated proceedings and the same is pending before the Jurisdictional authority at the time of filing of this application. Therefore, the application cannot be admitted and is to be rejected without going into the merits of the issue.

7. Accordingly, we rule as under:

RULING

As per the remand directions, on considering whether the issue raised in the application by the appellant was already pending before the department after extending opportunity to the appellant we find that the issue raised before this authority was taken up by the Jurisdictional authority. Therefore, under first proviso to Section 98(2) of the CGST/TNGST Act 2017, the application is rejected.

K. Manasa Gangotri

Ms. Manasa Gangotri Kata, IRS
Member, CGST

**AUTHORITY FOR
ADVANCE RULING**
20 APR 2020
TAXES AND SERVICE TAX
Chennai-6, Tamilnadu

Shri Kurinji Selvaan V.S.

Shri Kurinji Selvaan V.S.,
Member TNGST

**AUTHORITY FOR
ADVANCE RULING**
20 APR 2020
TAXES AND SERVICE TAX
Chennai-6, Tamilnadu

To

M/s. A.M. Abdul Rahman Rowther & Co
No.4, Old Palace Building, Pudukkottai.

// By Speed Post with Ack due to

Copy Submitted to:

1. The Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.
2. The Principal Chief Commissioner of CGST & Central Excise, No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch - 600 034

Copy to:

3. The Assistant Commissioner (ST),
Pudukkottai-1 Assessment Circle,
5893/3, Kattupudukkulam, Pudukkottai- 622 001.
4. The Commissioner of GST & Central Excise
No.1, Williams Road, Cantonment, Trichy 620 001.
5. Master file.